

AUG 29 2006**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****CHARLES ANDERSON MILLER,**

Petitioner - Appellant,

v.

STEVEN CAMBRA, Warden,

Respondent - Appellee.

No. 04-17413

D.C. No. CV-01-03977-MMC

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
Maxine M. Chesney, District Judge, Presiding

Argued and Submitted August 17, 2006
San Francisco, California

Before: CANBY, HAWKINS, and THOMAS, Circuit Judges.

Charles Miller appeals the district court's denial of his petition for writ of habeas corpus. This Court has jurisdiction under 28 U.S.C. § 2253. We review de novo the district court's denial, *Collier v. Bayer*, 408 F.3d 1279, 1281 (9th Cir. 2005), and we affirm.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Miller is correct in asserting that the prosecutor's comments were improper. The prosecutor vouched for witnesses, expressed her own opinion that she would have been afraid of Miller at one point, and referred to information outside the record. We do not condone these actions.

We deny Miller habeas relief, however, because the prosecutor's remarks during closing argument did not have a "substantial and injurious effect or influence in determining the jury's verdict." *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993) (internal quotation omitted). Because the offending remarks did not loom large in the context of the entire trial, and because there was very strong evidence establishing Miller's guilt, we have "fair assurance" that the jury's verdict was not swayed by the prosecutor's remarks. *See Valerio v. Crawford*, 306 F.3d 742, 762 (9th Cir. 2002).

We decline to consider the uncertified issue.

The judgment of the district court is **AFFIRMED**.